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Attorneys for Defendant  
JOHNNY RAY BURTON

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNNY RAY BURTON, and  
DAWN MCCANN

Defendants.

No. CR 12-0406 MMC

STIPULATION AND [PROPOSED]  
ORDER CHANGING BRIEFING  
SCHEDULE, HEARING DATE AND  
EXCLUDING TIME

The Court has set October 16, 2013 as the date for substantive motions in this matter. The Court has also set the following briefing schedule: motion filing deadline is September 11, 2013; oppositions due by September 25, 2013; replies due by October 2, 2013. The parties hereby stipulate and request an extension of the briefing schedule and filing deadlines, along with the motion hearing date for the following reasons:

- (1) Defendant Johnny Ray Burton had requested a retest of the suspected controlled substance seized in this case and had anticipated receiving those results prior to the filing of motions. Defense counsel has been informed by government counsel, Kevin Barry, that the chemist who conducted the original testing is no longer with the government lab; accordingly, the Government must retest the substance with a new

STIPULATION AND [PROPOSED] ORDER CHANGING HEARING DATE AND EXCLUDING TIME  
CR 12-0406 MMC, United States v. Johnny Ray Burton and Dawn McCann

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1 chemist. This is expected to take a few weeks. Thereafter, Mr. Burton would have the  
2 opportunity for retest by an independent laboratory.

3 (2) Defense Counsel for Johnny Burton has a pending discovery request regarding the  
4 seizure of Mr. Burton's cellphone. The discovery pertaining to the cellphone could  
5 very well be the subject of a motion, depending on what, if any, discovery exists  
6 regarding Mr. Burton's cellkhone. Given the lack of information at this koint, it would  
7 be more prudent for the merits a potential suppression motion to be assessed upon  
8 review of the discovery. It is expected that this discovery will be provided in the next  
9 few weeks.

10 Given these unanticipated issues, the parties request the following briefing schedule, based  
11 on the courts availability: Motions due: October 16, 2013; Oppositions due October 30, 2013,  
12 Replies due November 6, 2013, hearing date November 20, 2013 or, December 11, 2013. Defense  
13 Counsel for Mr. Burton is unavailable November 27 and December 4, 2013 due to pre-planned  
14 travel. The parties further request that time between these dates be excluded from any time limits  
15 applicable under 18 U.S.C. § 3161, for the purpose of effective preparation. *See* 18 U.S.C.  
16 §3161(h)(7)(B)(iv).

17 SO STIPULATED:

18 MELINDA HAAG  
19 United States Attorney

20 DATED: September 4, 2013

\_\_\_\_\_/s /  
21 KEVIN J. BARRY  
Assistant United States Attorney

22 DATED: September 4, 2013

\_\_\_\_\_/s/  
23  
24 JULIA MEZHINSKY JAYNE  
Attorney for JOHNNY RAY BURTON

25 DATED: September 4, 2013

\_\_\_\_\_/s/  
26  
27 GEORGE BOISSEAU  
Attorney for DAWN MCCANN

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~~PROPOSED~~ ORDER

For the reasons stated above, the Court sets the following briefing schedule: Motions due: October 16, 2013; Oppositions due October 30, 2013, Replies due November 6, 2013. The Court further sets a Motions date of ~~November 20, 2013~~ [December 11, 2013].

It also finds that exclusion from the time limits applicable under 18 U.S.C. § 3161 of the period from October 16, 2013 through ~~November 20, 2013~~ [December 11, 2013] is warranted and that the ends of justice served by the continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. §3161(h)(7)(A). The failure to grant the requested exclusion of time would deny counsel for the defendant and for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, resulting in a miscarriage of justice. 18 U.S.C. § 3161(h)(7)(B)(iv).

IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2013  
September 6, 2013

  
THE HONORABLE MAXINE M. CHESNEY  
United States District Judge

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